

PATENT
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/Scott A. Stinebruner/
Scott A. Stinebruner, Reg. No. 38,323

February 3, 2010
Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Robert Miller Art Unit: 2157
Serial No.: 09/732,189 Examiner: Hussein A. El-Chanti
Filed: December 7, 2000
For: PEER PROTOCOL STATUS QUERY IN CLUSTERED COMPUTER SYSTEM

PETITION TO CORRECT PATENT TERM ADJUSTMENT

Mail Stop - Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Patent Term Adjustment (PTA) under 35 U.S.C. §154(b) indicated on the Notice of Allowance dated January 22, 2010, Applicants herein respectfully request correction of the adjustment of patent term for the above referenced U.S. patent under 37 CFR §§ 1.181, 1.705(d).

Applicants respectfully disagree that the patent term adjustment is one thousand eight hundred ninety-two (1892) days. Applicants believe the correct amount for the patent term adjustment is one thousand nine hundred forty-eight (1948) days, as determined under 37 C.F.R. §§ 1.702, 1.704 and for the following reasons.

Applicants respectfully assert that a fifty-six (56) day increase, resulting from a delay from the mailing of the BPAI decision to the mailing of the Notice of Allowance was not included in the patent term adjustment calculation. The BPAI decision was mailed July 27, 2009 and pursuant to 37 C.F.R. §§ 1.702(c), the Office must act on the decision within four months of the mailing of the decision. The Notice of Allowance was mailed January 22, 2010, fifty-six (56) days after the required date of November 27, 2009.

Applicants respectfully assert that the USPTO's delay in the prosecution of the application is therefore two thousand one hundred forty-four (2144) days, not two thousand eighty-eight (2088) days as used by the United States Patent and Trademark Office to determine the PTA indicated on the January 22, 2010 Notice of Allowance. When coupled with Applicant delay of one hundred ninety-six (196) days, the total Patent Term Adjustment due to Office delay is one thousand nine hundred forty-eight (1948) days.

In addition, as this Application includes Office Delay prior to three years from filing (namely 22 months, or six hundred sixty-eight (668) days, from February 7, 2002, 14 months from filing, to December 7, 2003, 3 years from filing), Applicant submits that this application is subject to recalculation pursuant to Wyeth v. Kappos, No. 2009-1120 (Fed. Cir., Jan. 7, 2010). A request for recalculation will therefore be filed forthwith.

This patent is not subject to a terminal disclaimer.

Applicants do not believe any fees are due in connection with filing this communication other than a fee is due in the amount of \$200.00 as set forth in 37 C.F.R. § 1.18(e). If such petition is due or any additional fees are necessary, the Commissioner may consider this to be a request for such and is hereby authorized to charge any under-payment or fees associated with this communication, or to credit any over-payment, to Deposit Account No. 23-3000.

Respectfully submitted,

February 3, 2010
Date

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